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Current Topics.

Judicial Patronage.

As is generally known, the appointment or, to be more exact, the nomination, of puisne judges falls within the jurisdiction of the Lord Chancellor for the time being, while the nominations for the higher judicial posts—those of Lords of Appeal, the Lord Chief Justice, the Master of the Rolls, and the President of the Probate, Divorce and Admiralty Division—fall within that of the Prime Minister, and thus it fell to Mr. WINSTON CHURCHILL to nominate VISCOUNT CALDECOTE as the successor of LORD HEWART, whose resignation, owing to prolonged ill-health, we all regret. It might be thought that those latter selections, like the others, should more appropriately fall within the jurisdiction of the Lord Chancellor if only by reason of his more intimate knowledge of the qualifications of possible appointees, but no doubt there is consultation between the Prime Minister and the Chancellor as to the choice to be made. This was certainly the case when VISCOUNT CAVE held the seals, for in the admirable biography of that distinguished lawyer and judge by Sir CHARLES MALLET, there is given a letter to him from the then Prime Minister in these terms: "Though it is not my business, I should be grateful if you would tell me what is in your mind as to promotions to the Bench before you finally make the offers. Could we have a chat next week, and then we could go over any higher promotions that may be coming along." It fell to LORD CAVE to nominate an unusually large number of judges, and we are told that it was for him a special pleasure to nominate men whose quality he had learned to appreciate in the Chancery courts where he himself had practised.

War Damage to Property: Insurance.

THE practicability of an insurance scheme covering air-raid damage to property was the subject of an interesting note recently in the city columns of *The Times*. It was pointed out that the Prime Minister's announcement early in September that he had requested the Chancellor of the Exchequer to review the possibility of such a scheme had been generally welcomed; but that the announcement was made before the intensification of the enemy's air attacks on London, and that naturally there had been serious question since then about the financial implications and about the practicability of immediate payment of full value in any form. The Government's previous objection that the payment of full compensation might be beyond the nation's capacity had, it was urged, been strengthened rather than weakened by recent experience; though it was still difficult to imagine circumstances in which such compensation would be more than a moderate amount relatively to the total increase in the national debt during the war. The same writer states that it is clear that full compensation can only be envisaged if the inflationary possibilities in any immediate form of payment can be circumvented. In a sense the problem was not merely or mainly one of finance but of supply of labour and raw materials. To undertake the restoration of all damage, with or without a scheme of compensation, would be out of the question, because the work of restoration would divert materials from more important production. Meanwhile it is pointed out that war damage impairs the earning capacity of such businesses as may be affected, and it is suggested that the problem whether the resultant reduction in the national income may not be greater than the interest on the capital outlay that might be required to make good the damage is one worthy of reconsideration by the Chancellor of the Exchequer. It may, however, be urged that a matter of more immediate concern to property owners, and those called upon to advise them, is the restoration of confidence by the knowledge that damage to property will be made good within a reasonable period after the conclusion of hostilities.

Problems Involved.

SOME of the more important problems involved in the formulation of a practical scheme were considered recently by the City Editor of the *Sunday Times*, who urges that the fact that the rate of premium must be guesswork is not fatal to a scheme. The war will only last for a finite period, and if at the end of it too much has been collected the surplus could be shared out, while to avoid a sudden and heavy disbursement of cash the share-out might take the form of crediting to the policy-holder of one or more years' premiums on his normal fire policy. If there were a deficit at the end of the war it could be laid down that premiums should continue for a sufficient time to cover it. The same writer points out that whether a scheme were voluntary or compulsory, Government backing would be necessary, for no insurance company's funds are big enough to carry the total risk. An argument cited for compulsion is that such a scheme would extend to "safe" as well as "vulnerable" areas, and this would conform to the principle of insurance that both good and bad risks must be embraced. Moreover, a compulsory scheme could be made retrospective, both as to collection of premiums as from the outbreak of war and the covering of damage already inflicted. It is said that the collection of premiums would be easy. The companies would add the appropriate amount to existing fire premiums, and claims for damage could be dealt with by the companies' assessors for fire losses. With compulsion a flat rate of premium could be fixed for every part of the country. A voluntary scheme would involve differential premiums ranging, it is suggested, from 1 per cent. for the safest areas to 5 per cent. or more for the most vulnerable. A difficulty in this regard, the writer points out, would be the keeping from the enemy of information as to which areas were regarded as safe or vulnerable. Discussing the question whether claims should be met when the damage occurs or be postponed until after the war, the writer draws attention to the fact that building is now controlled and in most cases reconstruction will have to be deferred. Another argument for postponing payments is that in the meantime the insurance scheme would be

accumulating funds which could be lent to the Government. This would make the scheme a new means of promoting saving and indirect subscription to war loans. On the other hand, certain people would need their money at once. Some might use the money to redeem mortgages on their property. Moreover, a business house needs not only property insurance but insurance against loss of profits due to the destruction of the premises. The latter is regarded as equally practicable, especially as the necessary data already exist in the return for income tax made by every firm. The same writer stated that there was a body of opinion in both the insurance and business worlds which considered the war risk insurance for property was practical as well as an urgent necessity.

The Prime Minister's Announcement.

THE main issue discussed in the foregoing paragraphs has been settled by the Prime Minister's announcement on Tuesday that the Chancellor of the Exchequer was preparing, and, in fact, had virtually completed, the preparation of a Bill for nation-wide compulsory insurance against damage to property from the enemy's fire. Details of the scheme are not available at the time of writing, but its general character is clear from the following statement: "An appropriate charge," Mr. CHURCHILL said, "levied on the capital value of buildings and structures of all kinds will provide a fund from which, supplemented if need be by a State subvention, everyone can be covered, and covered with retrospective effect, and everyone can be made sure that compensation for his house and home and place of business will be paid to him in one form or another at the end of the war, if not sooner, and that, where necessity arises, in the intervening period means of carrying on will not be withheld." The Prime Minister also announced that it was proposed to provide insurance against the risk of war damage for all forms of movable property, such as industrial plant, machinery, household effects, and other personal possessions not at present protected by insurance. This would also be retrospective.

Rent Restriction.

A CIRCULAR (No. 2164) which has recently been sent from the Ministry of Health to housing authorities advises those bodies to keep a close watch upon the charging of exorbitant rents for accommodation in districts where many persons are homeless as the result of enemy action. It is pointed out that under the Rent and Mortgage Interest Restrictions Act, 1939, the great majority of dwelling-houses in the country, other than those belonging to local authorities, are now subject to the provisions of the Rent and Mortgage Interest Restrictions Acts. As regards unfurnished lettings the legal rent payable for houses already subject to those Acts when the Act of 1939 came into force is the rent payable on 3rd August, 1914, together with certain permitted increases. For all other controlled houses the legal rent is that payable on 2nd September, 1939, again with certain increases—namely, increases on account of subsequent structural alterations and improvements, and on account of increases in rates where these are paid by the landlord. The circular goes on to point out that the Rent Restrictions Acts do not in general apply to furnished lettings, but that they contain provisions which empower the courts to order that rents for such lettings, so far as they yield more than the normal profit, shall be irrecoverable, and that any payments of rent which may have been made in excess thereof shall be repaid to the lessee. It is recalled further that landlords charging extortionate rents for furnished lettings are also liable on summary conviction to a fine not exceeding £100, and the Minister of Health expresses the hope that local authorities will not, whenever circumstances warrant, hesitate to make use of the power they possess to institute proceedings under the Rent Restrictions Acts. One further point must be noted. The circular states that it is understood that in some instances owners of empty houses are refusing to let them because of the restrictions imposed by the Rent Restrictions Acts and are only prepared to sell. Local authorities are reminded of the powers which have been conferred on them of requisitioning empty houses, and it is suggested that these powers might suitably be exercised in such cases if the council are satisfied that it is necessary on account of the shortage of accommodation in their locality.

Rules and Orders: Civil Defence Employment.

THE Civil Defence (Employment) (No. 2) Order, 1940, which has been made by the Minister of Health under powers conferred on him by reg. 29B of the Defence (General) Regulations, 1939, requires every male person who on or after the date of the order, 12th September, 1940, is in the service of a local authority and employed as a member of the first aid post or ambulance services to continue in such employment until his services are dispensed with by the Minister or the person appointed by the local authority to be in charge of the service to which the person concerned belongs. The order does not apply to one employed without remuneration in either of these services, or to one not continuously employed whole time in such service. The effect of the order, as is pointed out in a circular (No. 2148) which has been sent to the authorities concerned, is to place the persons concerned in a position analogous to that of men serving in the armed forces of the Crown, in the sense that they are required to continue serving unless and until they can no longer render effective service or their services are more urgently needed elsewhere. The "person appointed by the local authority to be in charge of the service . . ." will normally be the county medical officer or the medical officer of health; but the circular states that it is open to the local authority to delegate to such other officers as may be deemed appropriate the power of allowing a member of either service to leave it, though the power to refuse permission to leave should not be delegated except under arrangements approved by the Regional Commissioner. The Minister of Health, who disclaims any intention to intervene in ordinary circumstances in the determination of individual cases, expresses the following views for the guidance of officers in charge: It is not considered necessary that persons who have left one of the services concerned before the provisions of the order became generally known, or before the officer in charge was in a position to exercise his discretion under the order, should be recalled; though persons who have given notice of resignation but are still serving may be required to continue in their employment at the discretion of the officer in charge. A person may properly be allowed to leave the service (*a*) for reasons of health or very urgent private affairs where the case cannot be met by the grant of temporary leave; (*b*) where he possesses special skill or experience urgently required for other work of national importance and is designated for such work by the Ministry of Labour and National Service; and (*c*) where he is found on any ground unsuitable for further service, in which case he may be discharged subject to the usual notice. The possibility of more remunerative employment is not, the circular states, a ground on which release should ordinarily be granted.

Rules and Orders: War Zone Courts, etc.

READERS' attention is drawn to the War Zone Courts Rules, 1940, dated 19th September, which have been made by the Lord Chancellor under the Defence (War Zone Courts) Regulations, 1940. These rules are set out in full on p. 585 of the present issue and do not require comment here. They come into operation immediately. Two further sets of rules have been received which will be published in our next issue. The first of these are the Rules of the Supreme Court (No. 6), 1940, dated 25th September, which provide for the insertion of a new Order LIVK prescribing the procedure under s. 4 (4) of the Trading with the Enemy Act, 1939. The other rules above referred to are the Bankruptcy (Amendment) Rules, 1940, dated 24th September, 1940, which have been made under s. 132 of the Bankruptcy Act, 1914, and provide for the insertion in the Bankruptcy Rules of a new rule 108A and of additional words at the end of r. 109. These rules came into operation on 1st October.

Recent Decisions.

IN *J. W. Taylor & Co.* v. *Landauer & Co.* (*The Times*, 2nd October) SINGLETON, J., upheld an umpire's award granting to buyers under a contract of sale for butter beans damages for non-delivery. The contract was entered into before the war and the goods were to be shipped to England during the period October to November, 1939. The sellers failed to deliver because they thought they would be unable to obtain the licence required under the Cereals and Cereal Products (Requisition and Control) Order, 1939. The order did not apply to contracts made before the war, and his lordship intimated that it was the sellers' duty to take steps to obtain a licence to enable them to comply with the contract.

In *Re Lees* (*The Times*, 3rd October) the Court of Appeal (MACKINNON, GODDARD and DU PARCQ, L.JJ.) upheld the decision of a Divisional Court dismissing an application for a writ of *habeas corpus* of one who had been detained by the Home Secretary in purported exercise of powers conferred on him by reg. 18B, 1 (A) of the Defence (General) Regulations, 1939. It was clear from the terms of the regulation that if the Home Secretary honestly believed that the applicant came within the provisions of the regulation he was authorised to make the detention, and his decision was not subject to review under the Habeas Corpus Act. The fact that the applicant had since been released under certain conditions imposed by the Home Secretary did not entitle him to the costs of the appeal.

Criminal Law and Practice.

Trial Together of Defendants on Separate Charges.

WHEN may two defendants be tried together, and when one gives evidence incriminating the other, what right in law has the other to cross-examine the first on that evidence? At Romford Petty Sessions on 24th September (*R.* v. *Bradbury and Norman*) two defendants were each charged with driving a motor vehicle on a road without due care and attention contrary to s. 12 of the Road Traffic Act, 1930. The facts in each case were the same, having arisen out of a cross-roads collision between the vehicles which the two drivers were respectively driving. Counsel for each driver consented to have the two cases tried together. At the close of the case for the prosecution, Bradbury was called and gave evidence which appeared to throw the blame for the collision on to Norman. Counsel for Norman then rose to cross-examine and was told by the clerk that he had no right to do so, but the minds of the justices would not be affected by any evidence given by one co-defendant against another. He added that by agreement between counsel they could cross-examine each other's client. This counsel accordingly agreed to do.

In indictable cases it is clearly more than a mere irregularity for a court to try together two defendants who are separately indicted. In *Crane* v. *Director of Public Prosecutions* [1921] 2 A.C. 299, 321, Lord Atkinson made this emphatic statement on the matter: "When an accused person has pleaded 'Not guilty' to the offences charged against him in an indictment, and another accused person has pleaded 'Not guilty' to the offence or offences charged against him in another separate and independent indictment, it is, I have always understood, elementary in criminal law that the issues raised by those two pleas cannot be tried together." In *R.* v. *Dennis* and *R.* v. *Parker* [1924] 1 K.B. 867, the recorder was under the erroneous impression that the defendants were jointly indicted. This was not the case, and in fact counsel for each defendant agreed to have the cases tried together. This was held to invalidate the trial from the beginning, and the fact that counsel had consented was held to make no difference as "consent cannot give jurisdiction in a criminal court, if indeed it can in any court, where no jurisdiction exists" (*per* Avory, J., at p. 869 of [1924] 1 K.B.).

Whether the same rule would be held to apply to summary proceedings, is, to say the least, doubtful. There can be no doubt that the justices cannot compel the trial together of defendants separately charged, as they can when defendants are charged jointly. In the latter case a defendant has no absolute right to a separate trial (*R.* v. *Littlechild* (1861), L.R. 6 Q.B. 293), which can only be granted at the discretion of the justices. In the case of persons separately summoned there is authority that a charge of the joint offence may in certain circumstances be heard against those persons (*In re the Stipendiary Magistrate of Brighton*, 9 T.L.R. 522). In that case two persons were separately summoned on charges of assault against the same person. The solicitor appearing for both persons applied to have the cases tried separately, but the magistrates nevertheless tried the two cases as one joint offence, the defendants being actually charged jointly. The Divisional Court held that the convictions were valid, as "there might have been an irregularity in the absence of a joint information, but nothing more" (*per* Mathew, J.). In *R.* v. *Staffordshire JJ.*, 32 L.T. (O.S.) 105, there were in fact separate informations as well as separate summonses, but the case against each defendant was heard at one and the same time and each was separately convicted. The objection to the proceeding was that it prevented one defendant from being a witness for the other. It was argued that the justices had exceeded their jurisdiction in trying the two cases together, but Lord Campbell, C.J., said: "That may have been an irregularity, but it was not a nullity. We must suppose that the justices applied the evidence in the case of each defendant." *A fortiori*, it is difficult to see how the proceedings can be a nullity where the defendants consent to be tried together, although summoned separately.

If two persons are tried together on charges arising out of the same facts, it appears to be common sense that one should be entitled to cross-examine the other on matters in the latter's evidence which tend to incriminate the former. *R.* v. *Wood and May* (6 Cox 224) was a case similar to that at Romford, as the charge against each prisoner was one of manslaughter, arising out of a driving accident. There cross-examination of one defendant by the other was allowed, but it should be observed that the defendants appear to have been jointly charged, as the facts were that they were indulging in a race. The ground for the decision appears to have been that of common justice, as Ballantine, for one of the defendants admitted that he knew of no case on the subject. (See also *R.* v. *Burditt*, 6 Cox 458.) In *R.* v. *Painter and Davis*, 13 J.P. 381, it was held that if one of two joint defendants calls witnesses, counsel for the other may cross-examine them. In *R.* v. *Hadwen* [1902] 1 K.B. 883, Lord Alverstone, C.J., considering the same question as to the right of one co-defendant to cross-examine another, quoted Jervis, C.J., in *R.* v. *Burditt*, 6 Cox 458: "The prisoner should certainly have been allowed to cross-examine and reply, because the witness called by Burditt gave evidence to criminate him, and that evidence became tacked, as it were, to the case for the prosecution."

If, as appears from *R.* v. *Hadwen*, that is the real ground for allowing one defendant to cross-examine another as to evidence which he has given against the former, there does not appear to be any difference in principle between the case of persons who are jointly charged, and that of persons who are not jointly charged, but are tried together. It is a matter of common justice that the prosecution should not receive a gratuitous addition to its evidence without being subject to the burden of cross-examination. It is true that persons who are not jointly charged have a right to be tried separately, but the fact that, for the convenience of the court and themselves, they agree to shorten the proceedings by being tried together, should not give the prosecution any further privileges to those to which they are by law entitled. The better view would appear to be that as the proceedings are not a nullity where two persons separately charged are tried together, whether by consent or otherwise (*R.* v. *Staffordshire JJ.* (above)), the right of cross-examination of a defendant giving evidence inculpating another is not a right which can be withheld at the discretion of that defendant or his counsel, but is one which the court is bound to grant *ex debito justitiae*.

Creditors' Approval of Deeds of Arrangement.

THE increasing popularity among creditors of deeds of arrangement has given rise to much discussion about the relation they bear to the creditors' right to petition for a receiving order. It cannot be said that a creditor's approval of the first method of obtaining payment of his debts invariably bars him from his remedy in bankruptcy, but the courts discourage double proceedings. A group of recent cases has thrown a great deal of light on the whole question. The further question of whether such a deed bars the creditor of his remedy by action is also elucidated.

The court is able to confine the creditor to his choice of the deed of arrangement by virtue of its wide power under s. 5 (3) of the Bankruptcy Act, 1914. Under that section, if the court is "satisfied that for sufficient cause no receiving order ought to be made," it may rescind a receiving order and dismiss the petition. It has been established by the leading case of *Re Stray*, 2 Ch. App. 374, that the petitioner's assent to or approval of a deed of arrangement is sufficient cause. He must make his election one way or the other: he cannot both approbate and reprobate by approving and then treating the deed, if it is substantially of the whole of the debtor's property, as an act of bankruptcy. The principle, which has been constantly reaffirmed, was thus explained in *Re Stray*: "A creditor, who is a party or privy to a deed or who has acted in any way which would be equivalent to an assent, recognition, or approval of the deed, cannot allege that the execution of the deed is an act of bankruptcy." It is not difficult to say if there has been assent to the deed or not, but the meaning of approval or recognition is not so clear. It is suggested that the position would be clearer if approval and recognition were distinguished, and there is warrant for this distinction in the cases. *Re a Debtor* (*No.* 11 *of* 1935) [1936] Ch. 165, is a case of approval. At a meeting of the creditors of a debtor, it was suggested that a deed of arrangement should be entered into by the debtor, and one of the creditors, who was present throughout the proceedings, acquiesced in the proposal that his own name should be added to those to serve on the committee of inspection. He was not a party to the deed itself, or even, in the proper sense, privy to the deed itself, for the deed might never have been drawn up. In fact, it was later executed and it was held that the creditor could not rely on it as an act of bankruptcy. He had taken part in the procedure which led up to the execution of the deed and this was approval. The result was that the Divisional Court dismissed his petition for a receiving order and a receiving order made by the registrar of the county court was discharged.

In the above case the creditor took an active part in the preliminary proceedings by consenting to serve on the committee. But in *Re a Debtor* (*No.* 382 *of* 1938) [1939] Ch. 145,

the same decision was reached without this consent being present. At the meeting, the representative of a minority of the creditors present moved an amendment to substitute a nominee of theirs for one of the trustees proposed; but the amendment was not seconded and fell to the ground. Apparently the representative took no further active part in the meeting but he did not vote against the proposal of a deed of arrangement: that proposal was carried without opposition, as was also the proposal to appoint a committee of inspection. But at the close of the meeting the representative asked the chairman to record his objection. Nevertheless the Court of Appeal held that the minority creditors, who later petitioned, had by their conduct tacitly acquiesced in the making of the deed and became bound by it along with the other creditors; they could not, therefore, rely on it as an act of bankruptcy. Slesser, L.J., followed the case previously mentioned which, he said, was similar in principle "in this, that there also a creditor by silence and nothing else was held to be privy to what was done at the meeting of creditors. albeit he had allowed himself to be proposed as a member of a committee of inspection, yet on the earliest occasion he said he would not serve on the committee and refused to sign the deed." But it is suggested that that case does not decide that mere silence amounts to approval. In letting his name go forward he had taken a real part in the preliminary arrangement, for his name would not have gone forward but for his acquiescence; his acquiescence was consent to his appointment. But silence, when it is proposed to ask the debtor to execute the deed, cannot be said to be consent, for the proposal would go forward even without his vote. Is mere silence acquiescence? The 1939 case does not seem to decide this either, though there is Slesser, L.J.'s, statement that it is. It would seem that his statement was not necessary to the decision, for there also the representative of the creditors took an active part in the preliminaries by making his own suggestion of a trustee; it was not a mere question of his relationship to a committee of inspection, but of concerning himself with the trusteeship of the deed itself.

Another case of 1936 comes nearer to raising the problem of acquiescence by silence alone. Clauson, J., with whom Luxmoore, J., concurred, said (*Re a Debtor* (*No.* 5 *of* 1936) [1936] Ch. 728): "There does appear to have been some arrangement that if he was not to be actually a member of the committee of inspection, at all events he was going to take a benevolent interest in the matter by giving advice." There was no evidence that he had agreed to his appointment to the committee, but the subsequent correspondence showed him saying: "I am not going to do anything to upset the deed of arrangement," but, "I stand outside for the present; I will not assent to the deed." But Clauson, J., held that this was equivalent to saying that he did not assent to the deed, but that he did not mind it as, so far as it went, it was not a bad thing. On this interpretation it appeared to the court to be "a plain case, not of assent to the deed, but of recognition or approval of the deed." Recognition and approval need not here be taken just as synonyms, for Clauson, J., is speaking for the purpose of drawing a contrast with assent; he summed up his interpretation by saying: "That is approval." This case does not raise the simple question, any more than the others, of the effect of unqualified silence, for here again there was something additional. The correspondence showed express willingness to co-operate with the committee of inspection, though he refused to attend its meetings; the creditor was not neutral towards the committee, or, if he was, it was a benevolent neutrality in its favour. When the question has to be decided the courts may say that a contrary vote is the only way of escape from the interpretation of silence as acquiescence, and there is the opinion of Slesser, L.J., to this effect.

In addition to conduct before the execution of the deed of arrangement, the creditor may be prevented from treating it as an act of bankruptcy by conduct after it has come into operation. It has been said that stronger evidence is required for subsequent conduct to have this effect. In this instance it is recognition of the deed, as distinct from approval in advance, that bars the creditor. A common form of such recognition is trading with the trustee under the deed. In *Re Brindley* [1906] 1 K.B. 384, Vaughan Williams, L.J., asked the question whether such trading "amounted to a recognition"? He found that "they accepted an order from the trustee under that deed for a supply of timber and received payment by a cheque from him; in doing that they clearly recognised the title of the trustee." They had no right to accept the money if their intention was afterwards to dispute the trustee's title. The same result was reached in the recent case of *Re a Debtor* (*No.* 23 *of* 1939), (1939), 2 All E.R. 338. The petitioning creditors there did not vote on the resolution to appoint trustees for the benefit of creditors, and later moved a resolution in favour of bankruptcy proceedings which was not carried. But it was held that they could not rely on the execution of the deed of assignment as an act of bankruptcy, even though they had shown their preference for the bankruptcy remedy, on the ground that they had later received orders for goods from the trustee, and carried out the orders, receiving payment for the goods so supplied. Greene, M.R., in giving the judgment of the Court of Appeal, said that such acts "with the full knowledge that he was acting as trustee under the deed were, in our opinion, according to the decision of this court in *Re Brindley*, by themselves sufficient acts of recognition."

The recent case also illustrates the rule that approval or recognition does not prevent the creditors from relying on other independent acts of bankruptcy. In this case they successfully did so, on the ground of notice of suspension of payment of debts by the debtor. He gave notice in this sense on 6th January to the petitioning creditors, though on the ninth of the month he executed the deed of assignment. It was held that this notice of suspension was an independent act and not part of the same transaction as the deed of assignment, for on the sixth there was no intention even to consider the execution of the deed. The case, therefore, was not within the rule that a creditor, who is precluded from relying on the deed itself, cannot rely on circulars convening a meeting called to decide whether or not a deed of assignment should be executed. The notice of the sixth was not a circular or a statement meant to lead up to, or connected with, the subsequent deed. The bankruptcy proceedings, therefore, were allowed to go forward.

In *Victor Weston* (*Fabrics*), *Ltd.* v. *Morgensterns* (1937), 3 All E.R. 769, the Court of Appeal held that there was recognition in identical circumstances. The question there, however, was not whether the deed, or any previous conduct by the debtor, could be used as an act of bankruptcy, but whether the creditors could sue the debtor for the balance of the price of goods sold to him before the execution of the deed of arrangement. They had continued to supply the trustee with goods and he had paid for them; there was thus clearly recognition. The point whether recognition barred an ordinary action was a novel one. The court held the action was barred as the claim of the plaintiffs had been assigned, by their recognising the deed, to the trustee thereunder; they were precluded from suing the defendant debtor. In so deciding, the court disagreed with Finlay, J., in the court below, who based the rule on estoppel. Estoppel is the usual explanation given of this principle, but apparently it has nothing to do with that doctrine, but is based on the broad ground of the effect that the deed is intended to have on previous claims: this explanation was reasserted by the Court of Appeal in No. 382 of 1938 ([1939] Ch. 145).

A Conveyancer's Diary.

Trustees Investing in Land.—II.

A WEEK ago I discussed various ways in which trustees can properly make a direct investment in land. But some trustees do in fact acquire land in other ways. Some of those ways are proper, some are not. For example, almost all trustees may properly lend money on mortgage of realty or long leaseholds, provided they do not lend more than two-thirds of the value of the mortgaged property assessed by a competent valuer. As between himself and the mortgagor, the trustee has, of course, all the ordinary remedies and rights of a mortgagee (subject at present to the Courts (Emergency Powers) Acts, and the Act limiting the right of a mortgagee to take possession). He can sell—indeed, that is usually his best course if a sale will pay off the loan, interest and costs. He can take possession—though one could seldom advise a trustee-mortgagee to do so, since he could be attacked by both the mortgagor and the beneficiaries. And there is nothing to prevent trustees from foreclosing, where circumstances make it desirable, even if they have no power to invest in land. In such circumstances the L.P.A. provides that the title of the trustee after foreclosure is to be that of a trustee for sale (s. 31). There is no duty on him to exercise the trust for sale with special expedition. So far from that, the law implies the usual power to postpone sale indefinitely (L.P.A., s. 25 (1)). This would be the case even if the foreclosed property was leasehold, since terms of years are included in the definition of land for the purposes of the Act (L.P.A., s. 205 (1) (ix)). The result in the case of a leasehold would be to give the whole net income of the leasehold after foreclosure to the tenant for life, an amount which might easily be much more than the mortgage interest (see L.P.A., s. 28 (2) and compare *Re Brooker* [1926] W.N. 93,

and *Re Berton* [1939] Ch. 200). Where the asset is a wasting one, the trustees will act fairly as between the beneficiaries in selling as soon as possible. No difficulty will be experienced with the purchaser concerning a title of this sort, as the trustees will hold on a trust for sale created by the Act itself, but there must, of course, be at least two trustees to receive the purchase-money (L.P.A., s. 27 (2)).

Another way in which trustees may properly hold land, although they have no power to invest in land, would be where the land was that of their testator and was devised to them on trust for sale. Under s. 25 (1) already referred to, such trustees may postpone sale indefinitely, and their title cannot be challenged by reason only of a long delay in executing the trust for sale, since s. 23 provides that a trust for sale shall be deemed to be in force unless or until the land has been conveyed under it. But all the beneficiaries (they being between them entitled to the entirety) could put an end either to the trust for sale or the power to postpone (*Re Ball* [1930] W.N. 120).

While trustees for sale are holding land, they have, as I previously explained, all the rights and powers both of tenant for life and Settled Land Act trustees. It may be considered inconvenient, where there is only one tenant for life of the proceeds of sale, that the trustees should do the daily work of management, and not he. In practice this difficulty can be got round to a great extent by making the tenant for life one of the trustees and leaving the work to him. If it is desired to make his position more formally correct, s. 29 of the Act can be employed. Under this section, trustees for sale may delegate to any person (not being a mere annuitant) beneficially entitled in possession to the net rents and profits for life or a less period, their powers of and incidental to leasing, accepting surrenders of leases and management. The person to whom they delegate acts in the names and on behalf of the trustees (subs. (2)) and has himself the duties and liabilities of a trustee (subs. (3)), but the trustees for sale are not liable for his acts or defaults (subs. (3)).

There are, of course, occasions where trustees have invested trust money in land without having any power to do so. This fact will not always be apparent from the paper title; for example, if trustees buy land in breach of trust and have it conveyed to themselves on trust for sale, a later purchaser of it will be unlikely to discover that his vendors had no right, as between themselves and some unknown third parties, to hold the land. The vendors will have the legal estate upon trust for sale, and can give a clean title to the purchaser, assuming, of course, that there are two of them to give a receipt. Where the land is not conveyed to the trustees on trust for sale, purchasers are apt to make heavy weather of the title, if they discover that the land was bought in breach of trust. But they need really have no qualms in accepting such a title unless there is some quite extraordinary feature about the case. The question is one of first principles, which were clearly explained by the Privy Council in *Wright* v. *Morgan* [1926] A.C. 788 (a New Zealand case). A trustee who invests trust money upon an unauthorised investment is liable to make good to the trust any loss arising therefrom. Contrarily, he is accountable to the trust for any profit which the investment may make. These liabilities are liabilities in terms of money, and provided he fully discharges them he may keep the unauthorised instrument itself or its proceeds. But, in order to ascertain the quantum of the trustee's liability the land has first to be sold, and therefore, so far from having no power to sell, the trustee is under a duty to sell as soon as may be, in order to get the breach of trust cleared up. The only case in which land bought in breach of trust becomes affected by the trust so as to prevent the trustees from disposing freely of it, is where all the beneficiaries are absolutely entitled and *sui juris*, and elect to waive the breach of trust and take the land in specie as part of the trust fund (see *Re Jenkins and Randall* [1903] 2 Ch. 362; and *Power* v. *Banks* [1901] 2 Ch. 487). Such a conjunction of circumstances will be somewhat rare; moreover, the chances are that, where they are in a position to elect, the beneficiaries will have sanctioned the purchase, and not merely ratified it afterwards, so that the original purchase would cease to be in breach of trust. The upshot is, that it will be seldom indeed that a purchaser runs any risk in accepting the title of trustees to land bought with trust money in breach of trust. The beneficiaries have their remedy against the trustee, but it does not prevent him from giving a good title to a *bona fide* purchaser.

The next Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Wednesday, 16th October, at 11.30 a.m.

Landlord and Tenant Notebook.

Removal of Hire-purchased Fixtures after Term.

II.—Removal by virtue of Agreement.

THE two leading cases in which fixtures have been held to have been removeable by virtue of agreement are *Stansfield* v. *Mayor, etc., of Portsmouth* (1858), 4 C.B.N.S. 120, and *Sumner* v. *Brownlow* (1865), 34 L.J.Q.B. 130. In the former the defendants had let a shipyard to a shipwright who had covenanted to erect certain machinery and leave it there at the end of the term; the lease went on to provide that this provision should not be construed so as to apply to machinery and other articles placed on the premises for any other purpose, but that it should be lawful for the lessee at any time during the term or at the expiration thereof to remove such last-mentioned machinery, etc. The plaintiffs, assignees in bankruptcy of the tenant, were refused access by the defendants, who had re-entered under a forfeiture clause. It was held that provision having been made by the parties themselves, the landlords were not entitled to the machinery. In *Sumner* v. *Brownlow*, *supra*, there was a similar provision entitling tenants to remove certain saltpans. In December, 1861, they sub-let the premises in breach of a covenant supported by a forfeiture clause. In June next year the landlords demanded possession, and in July they issued their writ. In January, 1863, the defendants set about severing and removing the saltpans, and when this process had been completed, which was on 17th March, they confessed judgment. (There was no relief against forfeiture for breach of covenant against alienation in those days.) It was held that they had been entitled to a reasonable time from 23rd June, 1862, when possession was demanded, in which to effect the removal covered by the agreement.

These cases were distinguished in *Pugh* v. *Arton* (1869), L.R. 8 Eq. 626, when a landlord was held entitled to so-called "tenant's fixtures," after forfeiture, against their assignee (the assignment being itself the cause of forfeiture), and the distinction drawn was that there was no express contract under which the tenant could have claimed them. This decision was, as mentioned in last week's "Notebook," criticised by Joyce, J., in *Re Glasdir Copper Works* [1904] 1 Ch. 819, but not on the ground that the distinction between cases in which an agreement entitling the tenant to remove fixtures and cases in which no such agreement is made was not vital. Joyce, J.'s, own decision, I suggested, while it recognised a right of removal after forfeiture apart from express contract, can, owing to the fact that it was a voluntary liquidation which gave rise to the forfeiture which put an end to the term, be brought within the principle laid down by Coke in the case of surrender.

It is pertinent to observe, then, that the only agreements which have been held to entitle tenants to remove fixtures after the term have been agreements made between them and their landlords. It would therefore appear that a hire-purchase agreement under which a tenant as hire-purchaser undertook to remove or to permit owners to remove the subject-matter, being a fixture, after his term would be ineffective.

This view of the situation receives some support from decided cases in which hire-purchase owners have sought to assert their rights against mortgagees. A fleeting success was scored in *Re Maryport Hematite Iron & Steel Co.* [1892] 1 Ch. 415, when a firm of engineers claimed a machine, supplied on hire-purchase terms, from the receiver of the colliery company which had so acquired and affixed it, and from their landlord, and from mortgagees of the lease. The mortgage, made in 1883, covered "All fixed engines, boilers . . . and other fixtures . . . now standing and being, or hereafter to stand or be" upon the premises; the machine claimed was installed in 1889; North, J., held that the mortgagors could not, however, confer a better title on the mortgagees than they themselves had. Then in *Gough* v. *Wood & Co.* [1894] 1 Q.B. 713 (C.A.), the defendants had agreed to supply a boiler to a nurseryman holding under a ninety-nine-year lease, the lessor being a party to the agreement and authorising eventual removal; a few days later, and before the boiler arrived, the lessee mortgaged his interest to the plaintiff, who did not take possession; soon after that the boiler was installed. Two years later the lessee defaulted and then became bankrupt. Next the defendants came and removed the boiler, and then the Official Receiver gave notice of disclaimer on the same day that the plaintiff issued his writ. It was held that the mortgagee's security was neither better nor worse than when he took it and did not include the boiler; having allowed the mortgagor to remain in possession, he had impliedly authorised him to carry on his business and hire fixtures for that purpose.

But hire-purchase owners met with reverses in *Hobson* v. *Gorringe* [1897] 1 Ch. 182, and *Reynolds* v. *Ashby & Son* [1904] A.C. 466. In the former a mortgagee of a freehold was held to be entitled to a gas engine affixed before the mortgage, he having no notice of the hire-purchase agreement and having taken possession before any attempt to remove it; *Gough* v. *Wood & Co.*, *supra*, was distinguished in that there was no implied authority or acquiescence, and no taking of possession. In *Reynolds* v. *Ashby & Son*, *supra*, a joiner, engaged in building a factory for the purposes of his business on land of which he held an underlease, mortgaged that underlease three times before hiring machinery from the plaintiffs on hire-purchase terms. The second mortgagee entered under his mortgage and let the factory to someone else on a weekly tenancy, and then the third mortgagees, who were the defendants in the action, bought up the first and second mortgagees' interests and granted a lease to the weekly tenant. *Gough* v. *Wood & Co.*, *supra*, was approved. When the second mortgagees entered, the plaintiff's right to enter and remove the machines ceased to be exercisable: the machines were no longer chattels and the "right" rested on the hire-purchase agreement.

Now none of these authorities dealt with the position of fixtures after the hirer's term had come to an end; but sundry observations and passages in judgments point to the conclusion that no hire-purchase agreement in which a landlord does not join can avail the hire-purchase owners. In *Reynolds* v. *Ashby*, *supra*, Lord Halsbury, L.C., said that an express or implied contract between the parties interested might protect the unpaid vendor under a hire-purchase agreement and make the subject-matter safe from being absorbed by creditor or landlord, but the rest of the speech makes it clear that "parties interested" would include the landlord. In *Hobson* v. *Gorringe*, *supra*, A. L. Smith, L.J., rejected the argument that a hire-purchase agreement, because it evidences an intention that its subject-matter should remain a chattel, could prevent it from becoming a fixture. While, taking the cases in which owners have succeeded, we find that in *Gough* v. *Wood & Co.*, *supra*, Lindley, L.J., though upholding the judgment of Wright, J., at first instance, observed that the learned judge had gone too far in saying "one man's property cannot be taken away from him by being fixed in the land of another"; the law was still as stated in "Brooke's Abr. Property"; and if a man engaged a builder to build a house and the builder used stolen bricks they would none the less pass. And in the course of the argument in *Re Maryport Hematite Iron and Steel Co.*, *supra*, North, J., referred to Lord Holt's judgment in *Poole's Case* (1703), 1 Salk., 368, defining the position of trade fixtures: "After the term they become a gift in law to him in reversion, and are not removable." This effectively disposes of any argument on the lines that the tenant cannot confer a better title than he has: a landlord has no need to invoke a tenant's title for what the law itself gives him.

Our County Court Letter.

Fraudulent Preference.

In a recent case at Burton-on-Trent County Court (*In re B. Goodall, Ltd.*; *The Liquidator* v. *Noon*) an application was made for a declaration that a transfer of goods worth £106 8s. 5d. was a fraudulent preference and invalid under the Companies Act, 1929, s. 265 (1). The case for the applicant was that in January, 1940, the company owed £150 to the respondent, who asked for some of the stock-in-trade to be transferred to him in part payment. This was done, and the debt to the respondent was reduced thereby to £43. On the 16th January, at a meeting with the liquidator, a director of the company disclosed the transfer of the goods to the respondent. That director subsequently became bankrupt, and the applicant's case was that there was knowledge by the company of insolvency at the time of the transaction, which occurred within three months of the winding up. The respondent's case was that the director had not filed his own petition until March, when he had been surprised to receive a claim for £349. After taking the auditor's advice, the director had signed a declaration of solvency in January, and the respondent did not know the company was in difficulties when he asked for the goods in part payment of his account. As the director was unaware of the insolvency at the time of the transaction, the latter was not a fraudulent preference. His Honour Deputy Judge Dawson Sadler held that the director must have had some idea of the company's financial position, and he should have known of his own insolvency. The transfer of goods was invalid, and an order was made for the return of the goods or the payment of £106 8s. 5d. to the liquidator for the benefit of the creditors, with costs. It transpired that the decision would enable a dividend to be paid of 6s. in the £.

The Remuneration of Solicitors.

In a recent case at Lancaster County Court (*Bannister, Bates & Sons* v. *Keighley*) the claim was for £11 11s. for professional services. The plaintiffs' case was that in October, 1936, they had acted as solicitors for the plaintiff on an application by the present defendant for an injunction. The latter was refused, but a judgment for damages was given for £2. There was, however, a successful counter-claim, and the damages were set-off against the £2. It was agreed that each party should pay his own costs. The plaintiffs' bill was £13 7s. 3d., but this was reduced to £11 11s., of which only £3 3s. 9d. was in respect of the plaintiffs' services. The charge was reasonable, and, although the bill was not delivered until two years afterwards, this was not unusual. The defendant admitted liability for £1 11s. 6d., but contended that he was not a party to the agreement that each side should pay their own costs. The effect was to increase his liability beyond what it would have been under the judgment, and the bill rendered was not in accordance with the order of the court. His Honour Judge Peel, K.C., held that the question of the new agreement was immaterial. The issue was whether the defendant owed the money to the plaintiffs, and judgment was given in their favour, with costs.

Detention of Luggage.

In a recent case at Loughborough County Court (*Coyle* v. *Daukins*) the claim was for the return of a trunk and for £1 9s. 3d. as damages for its detention. The plaintiff was a nurse, and her case was that, on leaving the nursing home of the defendant, she had been asked for £3 3s. alleged to be owing from herself to the defendant. As the plaintiff did not admit the debt, she had refused to pay, and was not allowed to remove her trunk. This was eventually recovered through her solicitor, but only after several abortive visits with a taxi. Some articles had also to be bought to replace those left in the trunk. The defence was a denial of the detention of the trunk, which had been placed, ready for removal, in the porchway of the cellar of the nursing home, where it had remained for about a week. His Honour Judge Galbraith, K.C., observed that insult had been added to injury by leaving the trunk where it might have been stolen. Judgment was given for the plaintiff for the amount claimed, with costs. It is to be noted that the only occasion upon which luggage can be detained, as security for the payment of a debt, is in the exercise of an innkeeper's lien. An ordinary householder, or the proprietor of a boarding-house which is not an inn, has no such right of detaining the chattels of an alleged debtor.

Decisions under the Workmen's Compensation Acts.

Lump Sum for Loss of Fingers.

In *Vowles* v. *Armstrong Siddeley Motors, Ltd.*, at Coventry County Court, the applicant's case was that he had been an apprenticed coppersmith in June, 1937. He was then a minor, and an accident had necessitated the amputation of four fingers of his right hand. Afterwards the applicant was re-employed at a wage of £1 7s. 6d., and he attained the age of twenty-one years on the 28th May, 1939. The present wages of the applicant were £3 2s., but his case was that, had it not been for the accident, his wages would now be £8 a week. He was willing to accept a sum offered, viz., £850 in settlement. The respondents had offered also to employ the applicant as long as he behaved himself and the firm continued in existence. His Honour Judge Hurst ordered the agreement to be recorded.

Injury to Eye.

In *Roberts* v. *William Parry & Co.*, at Bangor County Court, the applicant was aged fifty-three, and had sustained an injury to his eye in July, 1939, while working as a builders' labourer. A labourer's wages were usually £2 5s., but the applicant could do scaffolding and was paid £2 11s. a week. He had received £1 5s. 6d. as compensation for total incapacity, and was still unable to use a level for concreting. He also felt giddy on a ladder and could not work on chimneys, so that the respondents would not re-employ him. The medical evidence was that the field of vision had been shortened. The respondents' case was that the applicant was fit for ordinary labouring work, and at present there was a great demand for labourers. His Honour Deputy Judge Morris observed that the respondents did not consider it safe to re-employ the applicant, who would still be with them if it had not been for the accident. The applicant was therefore still totally incapacitated and an award was made of £1 5s. 6d. a week.

To-day and Yesterday.

Legal Calendar.

7 October.—In 1741 there lived in a lonely house near Tuam in Ireland an old gentleman named Oliver Bodkin. His household consisted of his second wife, his seven-year-old son by her, four menservants and three maids. One day all these, together with a visitor, were found murdered. Mr. and Mrs. Bodkin had been ripped open. The child had had its head cut off. The maids lay weltering in their blood. The men lay in a barn with their brains knocked out. Even the cats and dogs had been killed. It turned out that the slaughter had been done by John Bodkin, a scapegrace son of the gentleman by his first marriage, and that three accomplices had aided him. He had squandered his allowance and having been refused more had taken revenge. On the 7th October he and two of his associates pleaded guilty.

8 October.—On the following day, the 8th October, they were executed. Bodkin and one of his accomplices were afterwards gibbeted within sight of the house of the massacre. The other, John Hogan, who had been employed by the murdered gentleman as shepherd, had his head struck off and this was set up upon the market-house at Tuam.

9 October.—All the thirteen malefactors hanged at Tyburn on the 9th October, 1732, were highwaymen or robbers save Benjamin Loveday, who had sent a letter to a gentleman threatening to burn his house down unless he was paid twenty guineas, and Edward Dalton and Richard Griffiths, who had murdered John Waller in the pillory at Seven Dials. There was something to be said for that last crime, for Waller had been convicted of giving a false information against a man whom he accused of robbing him on the highway. At his trial it was proved that he had made it a practice to go the circuits and swear away the lives of innocent persons for the sake of reward. Part of his punishment was to be to stand in the pillory bareheaded, his offence being written in large characters near him. He did not survive it.

10 October.—On the 10th October, 1749, Amy Hutchinson, a girl of seventeen, was condemned to death at Ely for poisoning her husband. She had married him without affection in a fit of pique, thinking that her lover had left her after a quarrel, but three days after the wedding the young man had renewed his attentions, threatening that if she did not kill her husband he would kill her. His frequent visits to her became a scandal. Her husband grew peevish and disturbed, corrected her with his belt and took to drinking, thus leaving her exposed to the solicitations of her gallant, to whom she abandoned herself. At last she bought arsenic and ten weeks after her marriage put it into some warm ale which she gave her husband. In prison she was again abandoned by her lover. She left behind a paper warning young women not to listen to base or immodest persons, not to leave those they love in a pet, and when they are married to forgive and forbear and allow no room to busy meddlers.

11 October.—On the 11th October, 1907, Lord Coleridge was sworn in as a Judge of the King's Bench Division.

12 October.—In 1824 several smugglers were confined in the Fleet Prison and the authorities heard that some of them were contriving to carry on their old trade, selling contraband goods with great success. On the 12th October four revenue officers entered the prison and went straight to the room of Samuel Prescott, a well-known smuggler. Presenting a pistol at each of his ears they were met with no resistance, In his possession they found two trunks containing French dresses and bandanna handkerchiefs to the value of nearly £200. These they carried off.

13 October.—On the 13th October, 1762, John Kello, a young man of twenty-six, was hanged at Tyburn for forgery. The son of a mercer in Houndsditch, he had received a liberal education and he was a clever fellow, but "having rather a turn for pleasure than business, his friends had long expected some unlucky issue to his affairs, though not so fatal as to affect his life." In prison he behaved "with great obstinacy and indecorum, making little account of religion and the comforts of the Christian faith. He said he had some particular opinions of his own that he should never quit in this life or after it."

The Week's Personality.

Though he had not won a commanding position as an advocate, the high qualifications of Lord Coleridge for judicial office were never in doubt, and his appointment was generally welcomed by the legal profession. He was the first judge to succeed his father and his grandfather on the Bench. The former had been Lord Chief Justice and the latter, Sir John Taylor Coleridge, had sat in the Queen's Bench for over twenty years. He was also the first peer to practise at the Bar, having obtained the approval of the Attorney-General when he succeeded to the title in 1894, and the first peer to be appointed a judge. In that capacity he elected to be called Mr. Justice Coleridge and not Lord Coleridge. He was democratic in his political opinions and simple in his tastes and he walked regularly to the Law Courts smoking his pipe. But though he hated ostentation and formality, he did not fail to appreciate the importance of maintaining the majesty of the law and the dignity of its proceedings. In the discharge of his duties he was more than competent, and the deliberate, courteous and calm consideration which he gave to all the cases before him never failed to impress the parties. His judgments were always finely expressed. In private life he was unconventional, charming in manner and cultivated in his tastes. At the circuit mess his talents as a raconteur were a constant delight.

A Great Change.

The new order in the King's Bench, which brings in an ex-Chancellor to preside there in place of Lord Hewart, is a change of major importance. For one thing, Lord Caldecote's step down to the Bench after occupying the Woolsack constitutes an unconventional piece of legal history, though Lord Lyndhurst did much the same thing when, in 1831, he became Chief Baron of the Exchequer after resigning the Chancellorship which, however, he was to fill twice more, in 1834 and in 1841. As for Lord Hewart, his eighteen years' tenure of office has been surpassed by three only of the score of Chief Justices who have sat in his place during the last two and a half centuries. The great Lord Mansfield has an easy lead with thirty-two years, which Holt, C.J., and Cockburn, C.J., each in his generation, employed twenty-one years of judicial service to leave an individual mark on the development of the common law.

Lord Hewart.

Lord Birkenhead has already passed so far into legal history that it is hard to realise that only now is the active legal world saying good-bye to one who was his colleague as a Law Officer of the Crown. Of the man who was Solicitor-General when he was Attorney-General he wrote with strong appreciation: "I have never worked intimately with anyone whose mind marched more closely with my own upon the subjects which engaged them both." And again: "I had at all times the knowledge that nothing committed to him was ever bungled, that he developed an amazing skill in recommending the undesirable and in explaining the inexplicable"—such being all too often the hard lot of a Law Officer. (This praise has a characteristic note of F. E. Smith about it.) Gordon Hewart liked company and talk and he was very popular among his parliamentary colleagues in the House of Commons. If all else failed he would be remembered there by the cocktail specially concocted for him one night in the dining-room during the time when he was Attorney-General. Its huge success made it] into one of the stock lines and I am told that you are still understood if you say to the waiter: "Bring me an Attorney-General." But there is much else besides his good fellowship whereby the legal world will remember one of the most strongly marked personalities that Lancashire has sent into its midst.

Reviews.

Dumsday's Local Government Law and Legislation. Arranged and edited by Alfred Fellows, B.A., and Alfred R. Llewellin-Taylour, M.A., F.R.S.A., both of Lincoln's Inn, Barristers-at-Law. Forty-first year. 1940. Demy 8vo. pp. xvi and (with Index) 802. London: Hadden, Best & Co., Ltd. Price 47s. 6d. net.

The fact that a publication has reached its forty-first year is a sufficient guarantee of its usefulness and popularity. In presenting this volume, however, the learned authors point out that, in the last war, air raids were then *in their infancy* (the italics are the reviewer's) and there was no problem of evacuation. The present volume might therefore have been expanded into three, the first being devoted to A.R.P. circulars, and the second to evacuation. The learned authors, however, have accomplished th ir formidable task of compression with success. The reduction in staffs of local government offices increases the necessity for a succinct guide such as "Dumsday," and the opinion may be hazarded that the excellence of the present volume is a good augury for the publication in due course reaching its forty-second year.

Notes of Cases.

HOUSE OF LORDS.

Weaver *v.* Tredegar Iron & Coal Co., Ltd.

Viscount Maugham, Lord Atkin, Lord Wright, Lord Romer and Lord Porter. 30th May, 1940.

Workmen's Compensation—Workman injured while boarding train at private halt on leaving work—Special arrangement between employer and railway company for use of train by workmen—Liability—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 5, *c.* 84), *s.* 1.

Appeal from a decision of the Court of Appeal (32 B.W.C.C. 91).

The appellant workman, a collier, was pushed off a platform when a crowd of his fellow-employees were about to board a train, and was injured. Both the platform and the train were owned, managed and controlled by a railway company, but the railway line in question ran through the premises of the workman's employers, and the platform was not accessible except by passing over those premises. The station was not open to the public, and its name did not appear in the railway company's timetables. It was used by the workman and his fellow-employees at the colliery under an arrangement between the employers and the company under which certain trains were specially stopped in order to convey the workmen to and from their homes at a reduced fare, which was deducted from their wages. The workmen were free to go to and from their work by the road passing the colliery, but in practice they nearly all used the railway. The workman having claimed workmen's compensation in respect of his injury, the county court judge held that, as there was no duty on the workman to be where he was when the accident happened, that accident did not arise out of or in the course of his employment, so that his claim failed. The Court of Appeal upheld that decision, and the workman now appealed. (*Cur. adv. vult.*)

Lord Atkin said that *Webber* v. *Wansbrough Paper Co.*, 58 Sol. J. 685; [1915] A.C. 51, and *John Stewart & Son* (1912), *Ltd.* v. *Longhurst*, 61 Sol. J. 414; [1917] A.C. 249, were cases where the injured workman who was awarded compensation was not on his employer's premises or even on those on which he was employed to work. Another test was duty: whether the workman was doing something in discharge of a duty to his employer imposed on him by his contract of service (see *per* Lord Atkinson in *St. Helens Colliery Co., Ltd.* v. *Hewitson*, 68 Sol. J. 163; [1924] A.C. 59, at p. 71; and *per* Lord Cave in *Newton* v. *Guest, Keen & Nettlefolds, Ltd.* (1926), 70 Sol. J. 689; 135 L.T. 186; 19 B.W.C.C. 119, at p. 125). The word "duty," however, had so wide a connotation as to afford hardly any practical guidance. It could not be rejected: but it did not point very clearly to the desired goal. The cause of employment could undoubtedly not be limited to the time or place of the specific work which the workman was employed to do. The employment might run its course by its own momentum beyond the actual stopping place. There might be a reasonable extension in both time and space (see *Sparey* v. *Bath R.D.C.* (1931), 48 T.L.R. 87). In *John Stewart & Son* (1912), *Ltd.* v. *Longhurst*, *supra*, compensation was awarded to the widow of a carpenter who fell from a quay while on his way home from the ship on which he had been working (see the speeches of Lord Finlay and Lord Dunedin [1917] A.C., at pp. 253 and 257, and that of Lord Macmillan in *Northumbrian Shipping Co., Ltd.* v. *McCullum* (1932), 48 T.L.R. 568, at p. 572). It had not been intended in those passages to confine the principle of the employer's liability in such cases to areas where the only access was over third persons' properties. It was well established that a workman while leaving his employer's premises by one of alternative routes was, at any rate while on the premises, in the course of his employment; and it would surely be remarkable if, where at the end of one of those permitted routes the employers had provided by licence from third parties a route over such third parties' land for the very object of making the permitted route on the employer's premises an effective means of entrance or egress, the course of employment ceased on the employer's boundary, and the doctrine of the cases ceased to apply. "Going to" and "going from" the employment were not words which sufficiently accurately expressed the beginning and the ending of the employment in the sense which must be given to it in the light of the authorities. The application of the preceding observations to the present case was simple. The workman was on the facts clearly making use of facilities which the employers had provided for leaving the place of employment, and was for that purpose on premises to use which his employers had obtained a licence for him. The courts below had considered themselves bound by *St. Helens Colliery Co.* v. *Hewitson*, *supra*, and *Newton* v. *Guest, Keen & Nettlefolds, Ltd.*, *supra*. Those cases were different on their facts. The appeal should be allowed.

Viscount Maugham, dissenting, referred to *Hewitson's Case*, *supra*, and *Newton's Case*, *supra*, and to Lord Cave's speech in the latter case, at p. 125. Lord Sumner, too, had said there that *Hewitson's Case* showed that it was essential for a workman to show a contractual obligation to travel by the train in question. In his (his lordship's) opinion, none of the noble lords who took part in that decision could have thought that there was any distinction for the purposes of the Act between a workman on his way over a railway line to catch a provided train and such a man when actually in the train or on the platform waiting for it. The same principle was applied by that House in *L. & N.E. Rly. Co.* v. *Brentnall* [1933] A.C. 489, a decision in favour of the workman, however. It showed as clearly as *Newton's Case*, *supra*, that the principle did not apply only where the workman was actually travelling in the train or other vehicle. The workman here was where he was in consequence of, but not in the course of, his employment. *Charles R. Davidson* v. *McRobb* [1918] A.C 304; 62 Sol. J. 347, was decided mainly on the application of the duty test (see *Armstrong Whitworth & Co.* v. *Redford* [1920] A.C. 757). In his opinion the appeal should be dismissed.

The other noble lords agreed with Lord Atkin that the appeal should be allowed.

Counsel: *Paull*, K.C., and *A. A. Warren*; *Beney* and *Griffith Williams*.

Solicitors: *Smith, Rundell, Dods & Bockett*, for *T. J. Edwards and Son*, Newport; *Furniss, Wells & Co*, for *A. T. Prosser*, Cardiff.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Southern (Inspector of Taxes) *v.* Aldwych Property Trust, Ltd.

Lawrence, J. 29th May, 1940.

Revenue—Income tax—Claim to repayment—Company owning flats—Cost of advertising for tenants—Expenses of "management"—Relief claimable under Sched. A—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *s.* 33 (1), (3); *Sched. A, No. V, r.* 8; *Sched. D.*

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The respondent company owned and managed a number of flats in London and they made a claim under s. 33 of the Income Tax Act, 1918, to repayment of income tax paid on sums spent as expenses of management for certain years. The Crown objected to the claim because the expenses claimed for included the cost of advertising empty flats, and contended that such advertising was an expense for which relief might be claimed under r. 8 of No. V of Sched. A to the Income Tax Act, 1918, which provides that if the owner of property shows that the cost to him of maintenance, repairs, insurance, and management, has on average over the preceding five years exceeded, in the case of houses, one sixth part of the annual value "he shall be entitled . . . to repayment of the amount of the tax on the excess." By s. 33 (1) of the Income Tax Act, 1918: "Where . . . any company whose business consists mainly in the making of investments"—it was agreed that the respondents fell within that definition—"proves that, for any year of assessment, it has been charged to tax by deduction or otherwise, and has not been charged in respect of its profits in accordance with the rules applicable to Case I of Schedule D, the company . . . shall be entitled to repayment of . . . tax on any sum disbursed as expenses of management . . . for that year." By sub-s. (3): "A company . . . shall not be entitled to any relief under this section in respect of any expenses as to which relief may be claimed or allowed under rr. 7 and 8 of No. V of Schedule A." It was contended for the company (1) that s. 33 was specifically directed to the case of a business, whereas r. 8 dealt with the owner of property as such; (2) that the cost of advertising empty accommodation was an expense of managing the business of the company, which fell within the terms of s. 33, and was not comparable with the cost of "maintenance repairs and insurance" in which context the cost of "management" appeared in r. 8; (3) that the cost of such advertising could not fall within the words in r. 8 "cost of management," since that rule purported to give relief from tax under Sched. A, and there was no liability to such tax in respect of the flats while they remained empty. It was contended for the Crown that the advertising expenses were ones in respect of which relief could be claimed under r. 8 and therefore outside the scope of s. 33. The Commissioners held that the advertising expenses in question came under s. 33, the respondents' claim being accordingly allowed. The Crown appealed.

Lawrence, J., said that the respondents argued that *Inland Revenue Commissioners* v. *Wilson's Executors*, 18 T.C. 465, decided that advertising expenses did not come under "management" in r. 8. The Crown contended that that case was not a decision against its contention, because it merely laid down that the compensation paid by a landlord to his tenant for disturbance, and the costs of litigation with the tenant over the question of compensation, were not costs of management within the meaning of r. 8. The contention of the Crown, both generally and with reference to that particular case, was right. Lord Clyde (at p. 473), Lord Sands (at p. 475) and Lord Morison (at p. 477) used expressions indicating that in their opinion such costs as those in question in the present case would fall within the meaning of the word "management" in r. 8. Lord Clyde in particular, whose judgment it was suggested was most in favour of the respondents, said that the costs of managing the estate would include any costs in having the estate accounts properly kept, in collecting the rents and in making the necessary disbursements. It was clear that the cost of advertising was a necessary disbursement in the management of a property. No property which was let could be managed in the ordinary business sense without advertisement of it when it was about to become vacant. He (his lordship) could not agree with the Commissioners that the word "management" in r. 8 should be narrowed down by its association with the words "repairs, maintenance and insurance." The word

"management" bore its ordinary meaning and included all the ordinary expenses of the management of property taxable under Sched. A. The appeal must be allowed.

COUNSEL: *The Solicitor-General* (Sir William Jowitt, K.C.) and *R. P. Hills*; *T. Donovan*.

SOLICITORS: *The Solicitor of Inland Revenue*; *Ashurst, Morris, Crisp & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Inland Revenue Commissioners *v.* Payne.

Lawrence, J. 7th June, 1940.

Revenue—Sur-tax—Covenant to pay annual sum to company controlled by covenantor—Statutory provision that sum paid to form part of covenantor's income—Claim to exemption—Finance Act, 1928 (18 & 19 *Geo.* 5, *c.* 17), *s.* 38, *Sched. III, Pt. II, para.* 1.

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

In March, 1937, a company called Derwent, Ltd., was incorporated which the respondent Payne, controlled. The sole income of the company was a sum payable under a deed of covenant entered into by the respondent in March, 1938, by which he covenanted to pay the company weekly, for the rest of his life or until an effective resolution should be passed, or an order made for the winding up of the company, such a sum as after deduction of income tax should leave the clear weekly sum of £72. On the 31st March, 1938, the respondent paid to the company £3,744, the aggregate of fifty-two weekly payments of £72, the addition of income tax making a sum of £4,992. Arrangements were made whereby that sum was returned to the respondent as capital by redemption of part of the preference capital of the company. The question for decision was whether the £4,992 was an admissible deduction in computing the respondent's income for purposes of sur-tax for the material year. The Special Commissioners held the deduction admissible and the Crown appealed. By s. 38 (1) of the Finance Act, 1938, "If . . . the terms of any settlement are such that (*a*) any person . . . may have power . . . to revoke . . . the settlement . . . and, in the event of the exercise of the power, the settlor will . . . cease to be liable to make any annual payments payable by virtue . . . of the settlement . . . any sums payable by the settlor by virtue . . . of the settlement . . . shall be treated as the income of the settlor . . ." By para. 1 of Pt. II of the Third Schedule to the Act, in the case of settlements made before the 27th April, 1938, s. 38 (1) "shall not, by reason only of" s. 38 (1) (*a*) "apply to sums payable by the settlor by virtue . . . of the settlement . . . if (*a*) at the expiration of three months from the . . . passing of this Act (i) no person has . . . any such power as is referred to in" s. 38 (1) (*a*); "and (ii) the settlor . . . is not entitled to receive any consideration in respect of the release . . . of any such power; or (*b*) the like annual payments have been payable by the settlor by virtue of . . . the settlement in each of the seven years of assessment ending . . .; or (*c*) before . . . three months from the date of . . . this Act (i) the settlement . . . has been revoked; and (ii) a new settlement has been made by the settlor by virtue . . . whereof the settlor is liable to make the like annual payments and cannot . . . cease to be liable to make those payments before . . . six years" after the first sum was payable under the revoked settlement.

LAWRENCE, J., said that it was first argued for the respondent that the settlement did not give him a power of revoking or otherwise determining it, and that no cessation of liability was constituted within the meaning of s. 38 (1) by the fact that his liability was only to pay until the passing of an effective resolution. In his (his lordship's) opinion, the words "invoke or otherwise determine" covered the power given to the respondent under the settlement. Controlling the company as he did, he had power under the settlement to put an end to it at any time. The respondent on this point relied on *Watson* v. *Wiggins*, 17 T.C. 728, at p. 740; but that case was clearly distinguishable, and had no bearing on the present case. The main point was whether, in the event of the settlor's revoking the covenant completely within three months of the passing of the Act of 1938, he was exempted under the Third Schedule from the operation of s. 38. That depended on the construction of para. 1 (*a*) (*b*) and (*c*) of Pt. II of the Third Schedule. The respondent argued that para. 1 (*a*) (i) covered the case because, the covenantor having revoked the settlement *in toto*, no person could have any such power as referred to in para. 1 (*a*). Obviously in one sense those words did cover the case, but it was argued for the Crown that they must be read in their context, i.e., with para. 1 (*a*) (ii), (*b*) and (*c*), and that, so read, they clearly contemplated the continued existence of the settlement, and could not apply to a case where that settlement was entirely revoked; that the case of complete revocation was covered by para. 1 (*c*); and that that special provision referring to complete revocation excluded the possibility that it was intended to refer to complete revocation in para. 1 (*a*). In his (his lordship's) opinion that contention was right. Paragraph (*c*) dealt expressly with the possibility of obtaining exemption when a complete revocation was made, and was a provision that, in order to do so, the settlor must make a new settlement extending for at least six years from the date of the first payment under the original settlement. For those reasons, through the revocation which had been made, the respondent had failed to obtain the exemption conferred by the Third Schedule to the Act of 1938, and the appeal must be allowed, the sum in question not being deductible.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), *J. H. Stamp* and *R. P. Hills*; *Tucker*, K.C., and *F. Grant*, for the respondent.

SOLICITOR: *The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1940, No. 1744/L.29.

EMERGENCY POWERS (DEFENCE).

WAR ZONE COURTS, ENGLAND.

THE WAR ZONE COURTS RULES, 1940, DATED SEPTEMBER 19, 1940, MADE BY THE LORD CHANCELLOR UNDER THE DEFENCE (WAR ZONE COURTS) REGULATIONS, 1940.

1, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Defence (War Zone Courts) Regulations, 1940*a* (hereinafter called "the principal Regulations"), do hereby make the following Rules:—

Proceedings of War Zone Courts.

1. A war zone court shall sit in such places within the district for which it is established as the president of the court may determine.

2. A war zone court shall sit at such times as the president of the court may determine.

3. Where a war zone court adjourns any proceedings before the court, it may resume them at such time and place as the president of the court may determine.

4.—(1) Where under paragraph (1) of Regulation seven of the principal Regulations a direction has been given that proceedings for any offence shall be initiated in a war zone court, an information may be laid before the court charging that person with that offence, and the court may—

(*a*) issue a summons requiring the person charged to appear before the court at the time and place mentioned in the summons; or

(*b*) if the information was on oath, issue a warrant authorising the person named in the warrant and any constable or member of His Majesty's forces to apprehend the person charged and to cause him to be brought before the war zone court to answer the charge.

(2) If after the issue of any such summons as aforesaid the person thereby required to appear before the court does not appear before the court in accordance with the summons, the court may issue a warrant authorising any person named therein and any constable or member of His Majesty's forces to apprehend that person and bring him before the war zone court to answer the charge.

(3) Any warrant issued under this Rule may be executed anywhere in the United Kingdom.

(4) The powers conferred by this Rule may be exercised on behalf of a war zone court by one or more of the members of the court in the absence of the other members.

5. Where any person has been arrested without warrant for an offence alleged to have been committed in a war zone and a direction has been given under paragraph (1) of Regulation seven of the principal Regulations that proceedings against the person arrested for the offence for which he was arrested shall be initiated before a war zone court, he shall be kept in custody until he is brought before one or more members of a war zone court.

6.—(1) Before any person is tried by a war zone court for any offence, the prosecutor shall prepare and deliver to the court and to the accused person a statement of the offence or offences with which he is charged and particulars thereof.

Any such statement is hereinafter referred to as a "memorandum of accusation."

(2) Any question as to the sufficiency of a memorandum of accusation shall be determined by the war zone court; and the court may, at any stage of the proceedings, allow the memorandum of accusation to be amended.

7.—(1) The powers of a war zone court to remand any person or to take recognizances from any person may be exercised on behalf of the court by one or more of the members of the court in the absence of the other members.

(2) Where a war zone court or any member of the court remands any person in custody, the court or member may order that he be kept either in the custody of the police, or in the custody of an officer of His Majesty's forces or in any prison.

8. In any case in which the question whether any woman convicted by a war zone court of an offence punishable with death is pregnant would, under the Sentence of Death (Expectant Mothers) Act, 1931,*b* have been required to be determined by a jury, that question shall be determined by the war zone court on such evidence as may be laid before the court on the part of the woman or on the part of the prosecutor, and thereupon the provisions of that Act (other than the provisions of subsection (4) of section two thereof) shall have effect as if the question had been determined by a jury in accordance with those provisions.

a S.R. & O., 1940, No. 1444. *b* 21 & 22 Geo. 5, c. 24.

9. An order made or warrant issued by a war zone court may be signed by the president of the court or by the clerk of the court or his deputy or, except in the case of a warrant of committal issued under paragraph (1) of Regulation thirteen of the principal Regulations, by any advisory member of the court.

10. Where a person has been sentenced by a war zone court to death, the clerk of the court or his deputy shall forthwith report the conviction to the Secretary of State.

11. The clerk of the court shall keep a record of all trials before the war zone court and shall enter therein the names of the prosecutor and defendant, the charge on which the defendant was tried, whether he pleaded guilty or not, the decision of the court, the date of the trial and the names of the president and advisory members present, and of such other matters as may be directed by the president.

Review of Proceedings of War Zone Courts.

12. The Secretary of State shall from time to time authorise a person to receive on behalf of the persons by whom the proceedings of a war zone court are to be reviewed (hereinafter referred to as "the reviewing authority") any documents or exhibits transmitted to the reviewing authority, or any representations made to the authority, under the following provisions of these Rules; and a person so authorised is hereinafter referred to as "the proper officer."

13. Where any proceedings of a war zone court are to be reviewed, the clerk of the court shall transmit to the proper officer such exhibits, documents and other information relating to the proceedings as appear to the president of the court to be likely to be of material assistance to the reviewing authority, and such exhibits, documents and other information relating to the proceedings as the reviewing authority may require.

14.—(1) In reviewing any proceedings of a war zone court, the reviewing authority shall have regard to any representations made to them in writing by or on behalf of any person convicted in the proceedings under review.

(2) The reviewing authority may, if they think fit, hear any person convicted in the proceedings under review, or his counsel or solicitor.

15. Where a person convicted in proceedings before a war zone court, or any person representing him, is to be heard by the reviewing authority by which those proceedings are reviewed, the persons constituting the reviewing authority shall sit together for the purpose of holding the review; but save as aforesaid the said persons may review the proceedings either separately or sitting together, as they or a majority of them may determine.

16. Sections five, six, nine, ten, thirteen, and fourteen of the Criminal Appeal Act, 1907,*c* shall have effect in relation to the review of proceedings of war zone courts subject to such adaptations, modifications, and exceptions as are necessary for the purpose of enabling each of the said sections to have effect in the form in which it is set out in the Schedule to these Rules.

17. Save as expressly provided in these Rules, the procedure to be followed in connection with the review of proceedings of war zone courts shall be such as may be determined by the persons constituting the reviewing authority.

18. The reviewing authority shall cause their decision upon a review of any proceedings to be communicated to the Secretary of State, and the Secretary of State shall take such steps as appear to him to be expedient for the purpose of informing any person convicted in those proceedings of the decision of the reviewing authority.

Proceedings before Justices and Coroners.

19. In relation to proceedings before a court of summary jurisdiction in respect of an offence alleged to have been committed in a war zone—

(*a*) section seventeen of the Summary Jurisdiction Act, 1879,*d* shall have effect subject to the following modifications, that is to say:—

(i) in subsection (1) thereof, for the words "claim to be tried by a jury" there shall be substituted the words "claim to be committed for trial"; and

(ii) for subsection (2) thereof there shall be substituted the following subsection—

"(2) A court of summary jurisdiction, before the charge is gone into in respect of an offence to which this section applies, for the purpose of informing the defendant of his right to be committed for trial in pursuance of this section, shall address him to the following effect: 'You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be committed for trial; do you desire to be committed for trial?' with a statement, if the court think such statement desirable for the information of the person to whom the question is addressed, of the meaning of being dealt with summarily, of the courts by which such person may be tried if committed for trial, and of the fact that if he is tried by a war zone court the trial will be without a jury";

(*b*) section eleven of the Summary Jurisdiction Act, 1879,*e* and section twenty-four of the Criminal Justice Act, 1925,*f* shall have effect subject to the following modifications, that is to say:—

(i) in subsection (1) of each of the said sections for the words "his right to be tried by a jury" there shall be substituted the words "his right to be committed for trial";

(ii) for the question set out in subsection (2) of each of the said sections there shall be substituted the question "Do you desire to be committed for trial, or do you consent to the case being dealt with summarily?"; and

(iii) the words "of the courts by which he may be tried if committed for trial and of the fact that if he is tried by a war zone court the trial will be without a jury" shall be substituted in subsection (2) of the said section eleven for the words "and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury" and in subsection (2) of the said section twenty-four for the words "and of the assizes or quarter sessions, as the case may be, at which he will be tried, if tried by a jury"; and

(*c*) section nine of the Conspiracy and Protection of Property Act, 1875,*g* shall have effect as if the words "and the offence may be prosecuted on indictment accordingly" were omitted.

20.—(1) Where by virtue of the principal Regulations a person charged before justices or by a coroner's inquisition with an indictable offence is required to be committed for trial by a war zone court, the justices or coroner, as the case may be, shall make or authorise the making of such modifications in the procedure to be followed and forms to be used in connection with the committal of persons for trial at assizes or quarter sessions as appear to the justices or coroner to be necessary for the purpose of securing that the prosecutor, the witnesses, and the accused appear before the war zone court at the appropriate time and place.

(2) Section twenty of the Coroners (Amendment) Act, 1926,*h* shall have effect subject to the following modifications, that is to say:—

(*a*) in relation to any proceedings which are initiated in a war zone court by virtue of a direction given under the proviso to paragraph (1) of Regulation seven of the principal Regulations, references in the said section to examining justices shall be deemed to include references to that war zone court; and

(*b*) in subsection (2) of the said section for the words "charged on indictment" there shall be substituted the words "charged before a war zone court," and for the words "of which he could have been convicted on the indictment" there shall be substituted the words "with which he was charged before the war zone court."

Enforcement of orders of War Zone Courts.

21.—(1) Where a war zone court imposes a fine on any person or forfeits any recognizance, the court shall fix a term of imprisonment, not exceeding twelve months in the case of a fine or six weeks in the case of a recognizance, to be undergone in default of payment of the sum due and shall allow time for payment of the said sum unless there are, in the opinion of the court, special circumstances why time should not be allowed for payment, in which event the court may commit him forthwith and thereupon he shall be dealt with as if he had been sentenced by the court to imprisonment.

(2) For the purpose of the reduction of any term of imprisonment imposed by a war zone court in default of payment of any such sum as aforesaid, the term of imprisonment so imposed shall be deemed to have been imposed by a court of summary jurisdiction in respect of the non-payment of a sum of money.

(3) Where a war zone court allows time for a payment of any such sum as aforesaid, the court may make an order entrusting such court of summary jurisdiction as may be specified in the order with the function of enforcing payment of the said sum; and upon any such order being made the law relating to the enforcement of payment of fines imposed by courts of summary jurisdiction shall have effect for the purpose of enforcing payment of the said sum in all respects as if the person liable to pay that sum had been convicted by the court of summary jurisdiction so specified and as if that court had imposed the term of imprisonment aforesaid on the occasion of the conviction.

22. Any payments in respect of fines or forfeitures received by the clerk of a war zone court shall be dealt with in accordance with the directions of the Secretary of State.

23. Where costs are ordered by the court to be paid by the prosecutor or defendant, they may be recovered summarily as a civil debt.

General.

24. The Interpretation Act, 1889,*i* shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

25. These Rules may be cited as the War Zone Courts Rules, 1940.

Dated the 19th day of September, 1940.

Simon, C.

SCHEDULE.

APPLICATION OF CERTAIN PROVISIONS OF CRIMINAL APPEAL ACT, 1907, IN RELATION TO REVIEW OF PROCEEDINGS OF WAR ZONE COURTS.

Section 5.—(1) If it appears to the reviewing authority that a person convicted by a war zone court, though not properly convicted on some part of the memorandum of accusation, has been properly convicted on some other part thereof, the reviewing authority may either affirm the sentence passed on the person convicted at the trial, or pass such sentence in substitution therefor, not being a sentence of greater severity,

c 7 Edw. 7, c. 23. *d* 42 & 43 Vict. c. 49. *e* 42 & 43 Vict. c. 49. *f* 15 & 16 Geo. 5, c. 86. *g* 38 & 39 Vic., c. 86. *h* 16 & 17 Geo. 5, c. 59. *i* 52 & 53 Vict. c. 63.

as they think proper, and as may be warranted in law by the conviction on the part of the memorandum of accusation on which the reviewing authority consider that the said person has been properly convicted.

(3) Where a person has been convicted by a war zone court of an offence and, if the proceedings had been proceedings on indictment and the memorandum of accusation had been an indictment, the jury could on the indictment have found him guilty of some other offence, and having regard to the decision of the war zone court it appears to the reviewing authority that the court must have been sstisfied of facts which proved him guilty of that other offence, the reviewing authority may substitute for the conviction of the war zone court a conviction of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(4) If on any review it appears to the reviewing authority that, although a peson convicted was guilty of the act or omission charged against him, he was insane at the time the act was done or omission made so as not to be responsible according to law for his actions, the reviewing authority may quash the sentence passed at the trial and order the said person to be kept in custody as a criminal lunatic under the Trial of Lunatics Act, 1883, in the same manner as if a special verdict had been found by a jury under that Act.

Section 6.—(1) The operation of any order for the restitution of any property to any person made on a conviction by a war zone court, and the operation, in case of any such conviction, of the provisions of sub-section (1) of section twenty-four of the Sale of Goods Act, 1893, as to the revesting of the property in stolen goods on conviction, shall (unless the court before whom the conviction takes place direct to the contrary in any case in which, in their opinion, the title to the property is not in dispute) be suspended—

(*a*) in any case until the expiration of ten days after the date of the conviction; and

(*b*) in cases where any person convicted in the proceedings has been sentenced to death or to penal servitude for a term of seven years or more, or where, within ten days after the date of the conviction, a certificate is issued under sub-paragraph (*b*) of paragraph (1) of Regulation twelve of the Defence (War Zone Courts) Regulations, 1940, or a direction is given under paragraph (3) of the said Regulation, until the decision of the reviewing authority is announced;

and in cases where the operation of any such order, or the operation of the said provisions, is suspended until the decision of the reviewing authority is announced, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed by the reviewing authority.

A war zone court may give such directions as appear to the court to be expedient for securing the safe custody of any property pending the suspension of the operation of any such order or of the said provisions.

(2) The reviewing authority may annul or vary any order made on a trial by a war zone court for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

Section 9.—The reviewing authority may, if they think it necessary or expedient in the interest of justice,—

(*a*) order the production of any document, exhibit, or other thing connected with the proceedings, the production of which appears to them to be necessary for the determination of the case; and

(*b*) if they think fit order any witnesses who would have been compellable witnesses at the trial to attend and be examined before any one or more of the persons constituting the reviewing authority, whether those witnesses were or were not called at the trial, or order the examination of any such witnesses to be conducted in such manner as the reviewing authority may determine before any justice of the peace or other person appointed by the reviewing authority for the purpose, and take into consideration any depositions so taken; and

(*c*) if they think fit authorise one or more of the persons constituting the reviewing authority to receive the evidence, if tendered, of any witness (including any person convicted in the proceedings subject to review) who was a competent but not compellable witness in those proceedings, and, if any person convicted in the proceedings makes an application for the purpose, of the husband or wife of any such person, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application, and take into consideration any depositions so taken; and

(*d*) where any question to be considered by the reviewing authority involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the authority conveniently be conducted before the persons constituting the reviewing authority, order the reference of the question, in such manner as the reviewing authority may determine, for inquiry and report to a special commissioner appointed by the reviewing authority, and act upon the report of any such commissioner so far as they think fit to adopt it; and

(*e*) appoint any person with special expert knowledge to advise the reviewing authority in any case in which it appears to the authority that such special knowledge is required for proper determination of the case;

and issue any warrants necessary for enforcing the orders or sentences of the authority.

Section 10.—Where it appears to the reviewing authority to be desirable in the interest of justice that a person convicted in the proceedings which are to be reviewed by the authority should have legal aid and that he has not sufficient means to enable him to obtain that aid, the reviewing authority may assign to the person convicted a solicitor and counsel, or counsel only, for the purpose of securing his representation before the reviewing authority.

Section 13.—(1) On any review of proceedings of a war zone court in accordance with Regulation twelve of the Defence (War Zone Courts) Regulations, 1940, no costs shall be allowed on either side.

(2) The expenses of any solicitor or counsel assigned to any person under this Act as it applies in relation to the review of the proceedings of war zone courts, and the expenses of any witnesses attending on the order of the reviewing authority or examined in any proceedings incidental to the review and of the appearance of a person convicted, if he appears before the authority by which the proceedings in which he was convicted are reviewed, and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the reviewing authority for the purpose, or any reference of a question to a special commissioner appointed by the reviewing authority, or of any person appointed to advise the reviewing authority, shall be defrayed up to an amount allowed by the reviewing authority out of local funds in accordance with the Costs in Criminal Cases Act, 1908.

Section 14.—(2) The reviewing authority may admit any person convicted in the proceedings which are to be reviewed to bail pending the decision of the reviewing authority.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to the 5th October, 1940.*)

STATUTORY RULES AND ORDERS.

No. 1694. **Additional Import Duties** (No. 8) Order, September 26. (Twist Drills, etc.).

No. 1702. Additional Import Duties (No. 9) Order, September 26. (Fresh Tomatoes.)

E.P. 1751. **Arrival from Enemy or Foreign Territory** Order, September 27.

No. 1746/L.30. **Bankruptcy** (Amendment) Rules, September 24.

No. 1726/S.82. **Certificates of Births and Marriages** (Requisition) Regulations (Scotland), September 18.

E.P. 1724. **Cheese** (Maximum Prices) (No. 2) Order, September 25.

E.P. 1734. **Collection of Payments** (Exemption) Order, September 27.

E.P. 1736. **Condensed Milk** (Distribution) Order, 1940, Directions, September 26.

E.P. 1758. **Control of the Cotton Industry** (No. 10) Order, September 30.

E.P. 1710. **Control of Fertilisers** (No. 5) Order, September 25.

E.P. 1711. Control of Fertilisers (No. 6) Order, September 25.

E.P. 1712. Control of Fertilisers (No. 1) Order, 1939. Direction No. 5, September 25.

E.P. 1709. **Control of Paper** (No. 24) Order, September 25.

No. 1720. **Cotton Industry** (Reorganisation) Act (Commencement) Order, September 13.

No. 1721. Cotton (Spindles Levy) Order, September 13.

E.P. 1714. **Cream** (Production and Sales) Order, September 25.

E.P. 1732. **Defence** (Finance) Regulations, 1939. Amendment Order in Council, September 27.

E.P. 1733. Defence (Finance) Regulations (Isle of Man), 1939, Amendment Order in Council, September 27.

E.P. 1740. Defence (Finance) Regulations, 1939. Order in Council, September 27, 1940, adding Regulation 6A.

E.P. 1707. **Dried Peas, Beans and Lentils** (Control and Maximum Prices) (No. 2) Order, September 23.

E.P. 1735. **Food Rationing** Order, 1939. Order, September 26, 1940, amending The Directions, January 6.

No. 1749. **General Medical Council** (Temporary Provisions) (No. 2) Order in Council, September 27.

E.P. 1723. **Home Grown Wheat** (Control) Order, 1939. Order, September 25, 1940, amending the General Licence, August 31, 1940.

No. 1727. **India.** Secretary of State's Services (Medical Attendance) Rules. Amendments, September 18.

No. 1703. **Merchant Shipping** (Light Dues) Order in Council September 19.

E.P. 1715. **Milk** (Retail Prices) (Northern Ireland) Order, September 25.

E.P. 1716. Milk Marketing Board (Modification of Functions) Order, September 25.

E.P. 1752. **National Health Insurance** and Contributory Pensions (Temporary Employment of Persons in Agriculture) Defence Order, September 25.

E.P. 1753/S.85. National Health Insurance and Contributory Pensions (Temporary Employment of Persons in Agriculture) Defence Order (Scotland), September 25.

No. 1754/S.86. National Health Insurance Employments (Exclusion and Inclusion) Amendment Order (Scotland), June 4.
E.P. 1719/S.81. **North of Scotland Milk** Marketing Board (Modification of Functions) Order, September 25.
E.P. 1739. **Potatoes** (1940 Crop) (Control) Order, 1940, Amending Order, September 26.
E.P. 1730. **Road Vehicles and Drivers** (Amendment No. 2) Order, September 23.
E.P. 1717/S.79. **Scottish Milk** Marketing Board (Modification of Functions) Order, September 25.
No. 1663. **Spoilt Beer** Regulations, September 14.
No. 1745. **Unemployment Insurance** (Emergency Powers) (Temporary Employment in Agriculture) Regulations, September 25.
E.P. 1744/L.29. **War Zone Courts** Rules. September 19.
[E.P. indicates that the Order is made under Emergency Powers.]

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

The Law Society.

EXAMINATIONS.

Having regard to the present difficulties of travelling and for other reasons connected with the present situation, the Council have decided that the Intermediate Examination to be held on the 8th and 9th November, 1940, shall be held not only in London but also in Birmingham and Manchester.

The Council have also decided that the Final Examination to be held on the 4th, 5th and 6th November, 1940, shall be held in London, Birmingham, Guildford and Manchester.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of Mr. JOHN REGINALD WILLIAM BENNETT, at present an acting Judge in the Oudh Chief Court, as a permanent Judge of that Court, with effect from 26th October, in the vacancy caused by the appointment of Mr. Justice Hamilton to the High Court of Judicature at Allahabad.

The Lord Chancellor has appointed Mr. JAMES WILLOUGHBY JARDINE, K.C., to be Judge of Bow County Court, in the place of Judge Owen Thompson, K.C., who has retired. The appointment is dated the 5th October, 1940. Mr. Jardine was called to the Bar by the Inner Temple in 1904, and took silk in 1927. He was the Recorder of Halifax from 1923 to 1931, and of Newcastle-upon-Tyne from 1931 to 1932, when he became Recorder of Leeds.

The following appointments, promotions and transfers have taken place in the Colonial legal service :—

H. V. ANDERSON, to be Assistant Registrar-General, Kenya ;
E. J. STIVEN, to be Assistant Administrator-General, Zanzibar ;
E. H. HANSON, Magistrate, Uganda, to be Crown Counsel, Gold Coast.

Notes.

HOURS OF SITTINGS OF THE COURTS.

From the 14th October onwards the hours of the sittings of the Court of Appeal and the Supreme Court on week-days other than Saturdays will be from 11 a.m. to 3.30 p.m.

Owing to present conditions the Lord Chancellor has decided that the usual service held in Westminster Abbey to mark the beginning of Michaelmas Term shall not take place this year.

The President of the Probate, Divorce and Admiralty Division announced on Tuesday last that, during the Michaelmas Sittings, which begin on Monday next, he proposed to abandon the practice by which undefended divorce cases were heard in all the courts on one day each week. Instead, those petitions would be taken by one court more or less continuously throughout the term. That, he hoped, would avoid inconvenience in the event of air-raid alerts.

The Order making legal the taking or destruction of peregrine falcons or their eggs by approved authorised persons in certain counties and districts of England and Scotland has been extended to cover the counties of Ayr and Dumfries and the coastal areas of Dorset, Sussex and Kent. The expression "coastal area" means a coastal strip 10 miles deep. The object of the Order is to prevent so far as possible the severe losses caused by peregrine falcons to homing pigeons employed by the Royal Air Force, the Air Ministry stated.

Mr. Justice Singleton recently protested against solicitors who, when aware that their cases were not ready for hearing, allowed them to come into the Cause List without informing the court. His lordship said that the court was expected to attend day by day for the convenience of parties, and then found that cases were off. If a case went off because of an air-raid alert nobody could have the slightest complaint, but often the explanation was not satisfactory. His lordship indicated that he might have to penalise solicitors in costs if that continued.

NOTICE TO CONTRIBUTORS.

The Editor will be pleased to consider for publication contributions and correspondence from any professional source upon matters of legal interest.

All contributions (including correspondence) should be typewritten and on one side of the paper only, and must be accompanied by the name and address of the contributor.

The Editor is unable to accept any responsibility for the safe custody of contributions submitted to him, and copies should therefore be retained. The Editor will, however, endeavour in special circumstances to return unsuitable contributions within a reasonable period, if a request to this effect and a stamped addressed envelope are enclosed with the manuscript.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 24th October, 1940.

	Div. Months.	Middle Price 9 Oct. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	110½	3 12 5	3 3 2
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3% 1955–59	AO	100	3 0 0	3 0 0
War Loan 3½% 1952 or after	JD	101⅞	3 8 9	3 6 3
Funding 4% Loan 1960–90	MN	112½	3 11 3	3 3 3
Funding 3% Loan 1959–69	AO	97½	3 1 6	3 2 8
Funding 2½% Loan 1952–57	JD	97½	2 16 3	2 18 6
Funding 2½% Loan 1956–61	AO	90⅝	2 15 1	3 2 3
Victory 4% Loan Average life 21 years	MS	110½	3 12 5	3 6 0
Conversion 5% Loan 1944–64	MN	107½	4 12 9	2 12 1
Conversion 3½% Loan 1961 or after	AO	101	3 9 4	3 8 6
Conversion 3% Loan 1948–53	MS	101¼	2 19 1	2 15 3
Conversion 2½% Loan 1944–49	AO	99½	2 10 4	2 12 1
National Defence Loan 3% 1954–58	JJ	101¼	2 19 3	2 17 9
Local Loans 3% Stock 1912 or after	JAJO	87	3 9 0	—
Bank Stock	AO	326	3 13 7	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87	3 9 0	—
India 4½% 1950–55	MN	107¼	4 3 9	3 11 1
India 3½% 1931 or after	JAJO	91⅝	3 16 3	—
India 3% 1948 or after	JAJO	79½	3 15 8	—
Sudan 4½% 1939–73 Average life 27 years	FA	107	4 4 1	4 1 3
Sudan 4% 1974 Red. in part after 1950	MN	105	3 16 2	3 14 7
Tanganyika 4% Guaranteed 1951–71	FA	109	3 13 5	2 18 11
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	92	2 14 4	3 3 7
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955–70	JJ	103	3 17 8	3 14 9
Australia (Commonwealth) 3½% 1964–74	JJ	89	3 13 0	3 16 7
Australia (Commonwealth) 3% 1955–58	AO	87	3 9 0	4 0 8
*Canada 4% 1953–58	MS	110	3 12 9	3 1 3
New South Wales 3½% 1930–50	JJ	95	3 13 8	4 3 0
New Zealand 3% 1945	AO	94½	3 3 6	4 7 10
Nigeria 4% 1963	AO	104	3 16 11	3 14 9
Queensland 3½% 1950–70	JJ	93	3 15 3	3 18 1
*South Africa 3½% 1953–73	JD	101½	3 9 0	3 7 0
Victoria 3½% 1929–49	AO	96	3 12 11	4 0 9
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	79½	3 15 6	—
Croydon 3% 1940–60	AO	91	3 5 11	3 13 2
Leeds 3¼% 1958–62	JJ	94	3 9 2	3 13 1
Liverpool 3¼% Redeemable by agreement with holders or by purchase	JAJO	92	3 16 1	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	81	3 14 1	—
London County 3½% 1954–59	FA	101½	3 9 0	3 7 3
Manchester 3% 1941 or after	FA	79½	3 15 6	—
Manchester 3% 1958–63	AO	91½	3 5 7	3 10 10
Metropolitan Consolidated 2½% 1920–49	MJSD	97	2 11 7	2 17 5
Met. Water Board 3% "A" 1963–2003	AO	82½	3 12 9	3 14 6
Do. do. 3% "B" 1934–2003	MS	85	3 10 7	3 12 1
Do. do. 3% "E" 1953–73	JJ	88	3 8 2	3 12 7
Middlesex County Council 3% 1961–66	MS	91½	3 5 7	3 10 3
*Middlesex County Council 4½% 1950–70	MN	105	4 5 9	3 16 8
Nottingham 3% Irredeemable	MN	79½	3 15 6	—
Sheffield Corporation 3½% 1968	JJ	97½	3 11 10	3 12 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	102	3 18 5	—
Great Western Rly. 4½% Debenture	JJ	108½	4 2 11	—
Great Western Rly. 5% Debenture	JJ	112½	4 8 11	—
Great Western Rly. 5% Rent Charge	FA	110½	4 10 6	—
Great Western Rly. 5% Cons. Guaranteed	MA	103½	4 16 7	—
Great Western Rly. 5% Preference	MA	74	6 15 1	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.